F. M. TULLY

IBLA 78-502 Decided September 18, 1978

Appeal from decision of Colorado State Office, Bureau of Land Management, holding that oil and gas lease C-3464 was not extended by the approval of the Artesia Unit.

Affirmed.

1. Oil and Gas Leases: Extensions–Oil and Gas Leases: Unit and Cooperative Agreements

   Where a Federal oil and gas lessee commits a portion of his lease to a proposed unit agreement, thereafter assigns all that committed portion to another, which assignment is approved, and subsequently the proposed unit is approved by the Geological Survey, the lessee is not entitled to a 2-year extension under 30 U.S.C. § 226(j) (1970), for the retained portion of the lease.

APPEARANCES: F. M. Tully, Denver, Colorado, pro se.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

F. M. Tully appeals from a decision rendered by the Colorado State Office, Bureau of Land Management (BLM), dated May 26, 1978, which held that his oil and gas lease C-3464 was not extended by the approval of the Artesia Unit.

The decision below recited in part as follows:

> Noncompetitive Oil and Gas Lease Colorado 3464 was issued to F. M. Tully effective June 1, 1968, for a period of 10 years, and so long thereafter as oil and gas is produced in paying quantities; subject to any unit agreement . . . approved by the Secretary of the Interior. When issued the lease embraced 897.76 acres in Moffat County, Colorado, 160.19 of which are in the unit area of the

Artesia Unit Agreement No. 14-08-0001-16962 approved effective May 10, 1978.

From December 1, 1969 through November 1, 1970, record title to the subject lease was held by parties other than F. M. Tully, but F. M. Tully reacquired full record title effective November 1, 1970, for all 897.76 acres, and retained such title until an assignment of the lease as to part of the lands (238.18 acres) was approved effective March 1, 1978. On that date Allied Chemical Corporation became the record title holder of segregated lease C-3464-A. The lands in C-3464-A include all 160.19 acres which are within the Artesia Unit Area.

The partial assignment creating lease C-3464-A was executed by F. M. Tully on November 10, 1977 and filed in this office on February 13, 1978, together with seven other assignments from F. M. Tully to Allied Chemical Corporation. The assignment was approved by this office on February 24, 1978, effective March 1, 1978. On December 9, 1977, F. M. Tully executed a ratification and joinder of the Unit Agreement for the Development and Operation of the Artesia Unit Area . . . dated November 18, 1977. The joinder covers any of F. M. Tully's interests which were "presently held or which may arise under existing option agreements". The joinder also is binding on the assigns of F. M. Tully. F. M. Tully is also the holder of other interests in some of the oil and gas leases which were committed to the Artesia Unit.

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On May 22, 1978, this office received rental for the 11th year on oil and gas lease C-3464 and a request from Mr. Tully that the lease (C-3464) be extended as a result of the approval of the Artesia Unit Agreement.

[1] The gist of appellant's argument seems to be that he committed lease C-3464 to the proposed unit on December 9, 1977, and the date when the unit was formally approved by the Geological Survey is merely the date as of which the lands are to be segregated. In essence he asserts that May 10, 1978, the day the Geological Survey made the effective date of approval of the unit, has significance only to fix the date of segregation of the leases, invoking 43 CFR 3107.4-3.

The applicable law, 30 U.S.C. § 226(j) (1970), reads in part as follows:

> Any lease issued for a term of twenty years, or any renewal thereof, or any portion of such lease that has become the subject of a cooperative or unit plan of development or operation of a pool, field, or like area, which plan has the approval of the Secretary of the Interior, shall continue in force until the termination of such plan. Any other lease issued under any section of this chapter which has heretofore or may hereafter be committed to any such plan that contains a general provision for allocation of oil or gas shall continue in force and effect as to the land committed so long as the lease remains subject to the plan: Provided, That production is had in paying quantities under the plan prior to the expiration date of the term of such lease. Any lease heretofore or hereafter committed to any such plan embracing lands that are in part within and in part outside of the area covered by any such plan shall be segregated into separate leases as to the lands committed and the lands not committed as of the effective date of unitization: Provided, however, That any such lease as to the nonunitized portion shall continue in force and effect for the term thereof but for not less than two years from the date of such segregation and so long thereafter as oil or gas is produced in paying quantities. [Emphasis added.]

Thus under the law where a portion of a lease is added to a unit plan, that portion not so added is segregated into a separate lease and continues for its term or for 2 years, whichever is longer. This concept is also embodied in 43 CFR 3107.4-3 as follows:

> Any lease committed after July 29, 1954 to such a plan, which covers lands within and lands outside the area covered by the plan, shall be segregated, as of the effective date of unitization, into separate leases; one covering the lands committed to the plan and the other the lands not so committed. The segregated lease covering the nonunitized portion of the lands, shall continue in force and effect for the term thereof but for not less than two years from the date of segregation, and so long thereafter as oil or gas is produced in paying quantities.

Under appellant's construction of the statute and regulations, his commitment of his lease to a unit not in esse fixed his rights for a minimum of 2 years as to the portion of his lease not so committed. We disagree.

At the time of the approval and (creation in legal contemplation) of the unit by the Geological Survey on May 10, 1978, lease C-3464 contained no lands in the unit, since an assignment, effective March 1, 1978, took out of that base lease all the lands therein which are within the Artesia Unit Area. The crucial period for determining whether a lease is entitled to a 2-year extension under 30 U.S.C. § 226(j) (1970), is the span between the approval (and creation) of the unit by the Geological Survey and the date its termination becomes effective. See Duncan Miller, 4 IBLA 274 (1972); cf. United States Smelting Refining & Mining Co., 8 IBLA 354 (1972); Duncan Miller, 10 IBLA 4 (1973).

Applying that standard, appellant had no interest in the unit area during that span. See 30 CFR Part 226 (1977).

Accordingly, the decision below must be deemed correct.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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Frederick Fishman
Administrative Judge

I concur:

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Edward W. Stuebing
Administrative Judge

I concur in the result. See attached opinion:

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Joan B. Thompson
Administrative Judge

ADMINISTRATIVE JUDGE THOMPSON CONCURRING IN THE RESULT:

The thrust of appellant's arguments in this case is that oil and gas lease C-3464 was committed to the proposed unit prior to its approval by Department personnel effective May 10, 1978; that the partial assignment prior to that date did not affect the commitment of the remaining portion of the lease, and, therefore, the lease is entitled to the 2-year extension provided by 30 U.S.C. § 226(j) (1970). In essence, appellant is saying that commitment by a lessee to a proposed unit agreement plan is the determinative time for affixing rights, rather than the effective date of approval of the unit agreement by authorized Interior personnel. Appellant cites two cases to support its position, High Crest Oils, Inc., 29 IBLA 97 (1977), and Bruce Anderson, 30 IBLA 179 (1977).

Neither of the cases cited by appellant, however, compel the result he desires in this case. Both were concerned with approved unit agreements already in effect. In Anderson, the question was the effective date of a subsequent joinder by commitment to the unit prior to the expiration of an oil and gas lease. In High Crest Oils the question pertained to unleased Federal land within the area embraced by a unit agreement. It was pointed out in High Crest, at 98, that the mere approval of a unit agreement covering an area of Federal lands did not commit those lands to the agreement. Instead, the lands would have to be leased upon condition that the lessee join the unit. Unlike those cases, here we are faced with events prior to approval of the unit agreement.

In reviewing the entire provision of the Mineral Leasing Act applicable here, 30 U.S.C. § 226(j) (1970), it is evident that the first two paragraphs provide an authorization to the Secretary of the Interior to approve cooperative or unit plans and commitments of Federal leases to such plans. The fourth paragraph of the Act, which is quoted in part in the majority opinion, insofar as it relates to segregations of leases committed to units and extensions of lands in non-unitized portions of leases, necessarily contemplates approved units. Section 20 of the standard form for unit agreements set forth at 30 CFR 226.12, provides in part: "Effective date and term. This agreement shall become effective upon approval by the Secretary or his duly authorized representative and shall terminate on * * *." There is no showing that this standard provision was not a part of the agreement. Thus, consistent with the regulations and statute, we must assume that the agreement was not effective until it was approved by the Secretary's authorized representative. The determinative date in this case was the effective date of the approved unit, i.e., May 10, 1978. Appellant's argument that a prior date, when he attempted to commit the lease to the unapproved proposed unit plan should be used, cannot be accepted. There could be no valid commitment of the lease until the unit agreement was approved.

Before the approval and effective date of the unit, appellant had assigned a portion of the lands from the lease. That partial assignment was approved before the effective date of the unit. The lands remaining within lease C-3464 were not covered by the unit agreement when it was approved; therefore, none of the statutory provisions relating to segregation of leases committed to a unit and extension of non-unitized portion of leases were applicable to C-3464. For this reason, the decision below must be affirmed.

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Joan B. Thompson
Administrative Judge